IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.122 of 1986
Date of decision:15.11.2006

The Commissioner of Income Tax, Jalandhar

....Petitioner

versus

M/s Khalsa Engineering Works,Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 29.11.1976 in ITA No.727(ASR)/ 1975-76, for the assessment year 1971-72:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the decision of the Appellate Assistant Commissioner, deleting the addition of Rs.71,983/- representing the value of 43 tin ingots, which were admittedly pledged by the assessee with Allahabad Bank on which it obtained financial help from the Bank?"

The assessee had mortgaged 43 tin ingots with the Bank which were not accounted for in the stock of register as on 31.3.1972. The Assessing Officer added a sum of Rs.71,983/- on account of unexplained investment on that account. The appellate authority deleted the addition on the ground that the assessee had to move papers at several stages and though, the goods were pledged with the bank, the same were not actually received and pledge was only on the basis of invoice. The assessee had pledged fake items in connivance with the officials of the bank.

We have heard learned counsel for the revenue and perused the

findings recorded.

Only contention raised by the learned counsel for the revenue is that if the assessee fails to disclose material facts, re-assessment proceedings will be called for. He relies upon judgment of this Court in **Devgon Rice and General Mills v. CIT and another,** (2003) 263 ITR 391.

We are unable to see any relevance in the judgment relied upon as the question is not of re-assessment but whether the appellate authority and the Tribunal were justified in deleting the addition by holding that there was no undisclosed income as was assumed by the Assessing Officer from the record showing pledge of imported items and in fact no import had taken place.

In view of finding of fact concurrently by the CIT and the Tribunal that the assessee did not actually have undisclosed income, we are unable to hold that the deletion of the addition was not justified.

We find that order passed by the Tribunal in the case of **Chauhan Papers Pvt. Limited,** taking the same view, was upheld by this Court while dismissing ITA No.358 of 2006 on October 12, 2006.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of.

(Adarsh Kumar Goel)
Judge

November 15, 2006
'gs'

(Rajesh Bindal)
Judge